

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

January 8, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF Nos.: 97HD-354 &  
09HD-055  
Hawaii

Rescind Prior Board Action of November 15, 2002, Item D-3, Cancellation of Revocable Permit No. S-4350 and Issuance of New Revocable Permit to Hawaii Conference Foundation, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-9-02: 7, 8, 9 & 10;

Cancellation of Revocable Permit No. S-4350 and Issuance of Direct Lease to Hawaii Conference Foundation for Church and Landscaping Purposes; Right-of-Entry to Hawaii Conference Foundation for Survey Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-9-02: 7, 8, 9 & 10.

APPLICANT:

Hawaii Conference Foundation, a Hawaii non-profit corporation, whose business and mailing address is 1848 Nuuanu Avenue, Honolulu, HI 96817.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lalamilo, situated at Puako, South Kohala, Hawaii, identified by Tax Map Keys: 3<sup>rd</sup>/ 6-9-02: 7, 8, 9 & 10, as shown on the attached map labeled Exhibit A.

TMK/ ZONING/ AREA/ CURRENT USE STATUS:

TMK	ZONING		AREA	CURRENT USE STATUS/ ENCUMBRANCE
	LUC	CZO		
3 <sup>rd</sup> / 6-9-02: 7	Urban	SMA	0.75 ac	Portion encumbered by LOD S-26,994 for

TMK	ZONING		AREA	CURRENT USE STATUS/ ENCUMBRANCE
	LUC	CZO		
		Open		perpetual access and utility easement in favor of TMK 6-9-02: 5
3 <sup>rd</sup> / 6-9-02: 8	Urban	SMA Open	0.84 ac	Vacant and unencumbered
3 <sup>rd</sup> / 6-9-02: 9	Urban / Conser- vation	SMA Open	0.45 ac	RP No. S-4350 to Hoku Loa Church; GL S-4858 for term access easement in favor of TMK 6-9-02: 11; LOD S-28,611 for perpetual access and utility easement in favor of TMK 6-9-02: 12
3 <sup>rd</sup> / 6-9-02: 10	Urban / Conser- vation	SMA Open	0.39 ac	LOD S-28,611 for perpetual access and utility easement in favor of TMK 6-9-02: 12

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

TMK 3<sup>rd</sup>/ 6-9-02: 9: restoration, maintenance and operation of historical church as an active and living historical site open to the public and related purposes.

TMKs 3<sup>rd</sup>/ 6-9-02: 7, 8 and 10: creation of a scenic landscaped vista and protection of the historical integrity of the Hoku Loa Church.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Pursuant to HRS Section 171-43 and the minimum rent policy established by the Board at its meeting of May 13, 2005 under agenda item D-19, staff is recommending the annual rent be set at \$480. However, Applicant desires to petition the Board for gratis rent.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th and 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Applicant will have an environmental assessment prepared and published in accordance with the requirements of Hawaii Revised Statutes (HRS) Chapter 343 and Chapter 11-200, Hawaii Administrative Rules (HAR).

Portions of TMK 3<sup>rd</sup>/ 6-9-02: 9 and 10 are located in the conservation district, general subzone. Applicant will need to obtain a Conservation District Use Permit to the extent Applicant's project involves the conservation district.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for the costs of public notice pursuant to HRS Section 171-16;
- 2) Process and obtain subdivision at Applicant's own cost;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Publish an environmental assessment with the Office of Environmental Quality Control in compliance with the HRS Chapter 343 and HAR Chapter 11-200, and obtain Finding of No Significant Impact (FONSI) for the project;
- 5) Obtain a Conservation District Use Permit for the project to the extent it impacts portions of TMKs 3<sup>rd</sup>/ 6-9-02: 9 and 10 within the State conservation district; and

- 6) Obtain a County of Hawaii Special Management Area (SMA) permit or SMA exemption.

REMARKS:

The Hoku Loa Church was first constructed on a portion of the subject lands (TMK 3<sup>rd</sup>/ 6-9-02: 9 (the "church lot")) in 1859. The church was abandoned in approximately 1915, and fell into disrepair until 1966 when the Board, at its meeting of October 14, 1966, Item F-21, issued a construction right-of-entry to the Hoku Loa Tri-Denominational Council for restoration of the church. In the ensuing years, the church was restored in accordance with plans approved by the Division of State Parks. In 1969, the Board approved the issuance of Revocable Permit No. S-4350 to Hoku Loa Church Historical Foundation. The church has been in operation continuously under RP S-4350 since the restoration.

By letter dated April 6, 1997, the Applicant notified the Department of Land and Natural Resources that Applicant is the successor to the Hoku Loa Church Historical Foundation and requested the issuance of a revocable permit for the church property in its name. Applicant additionally requested a revocable permit for the State-owned parcels abutting the church property to maintain for landscaping purposes and to enhance the historical integrity of the church. The request was slated to be brought before the Board at its meeting of May 9, 1997, but was withdrawn at the request of the owner of the parcel designated as TMK 3<sup>rd</sup>/ 6-9-02: 12 because of unresolved access easement issues.

By letter dated October 4, 2001, Applicant renewed its request for a revocable permit covering the subject lands. At its meeting of November 15, 2002, Item D-3, the Board approved as amended the request for the revocable permit. The Applicant sought gratis rent at that time, but the Board amended the submittal to provide that the rent would be determined by the Chairperson. The Board asked staff to review the Applicant's financial records for the church to ascertain the value Applicant was providing to the State in maintaining the historic site, and to calculate a reasonable rent in light of that maintenance.

After review of the Applicant's records on church maintenance, the Staff Appraiser recommended a gratis rent for the first 17 months beginning November 15, 2002, and \$900 per month thereafter. Applicant objected to this appraisal and sought an appeal of the rent determination. Staff recommended at that time that the Board confirm the in-house appraisal. At its meeting of April 22, 2005, Item D-8, the Board deferred action on the appeal to allow Applicant an opportunity to investigate the process for obtaining historic designation for the church. The Board mentioned that a historic designation might warrant a lower rent under the permit.

Shortly thereafter, at its meeting of May 13, 2005 under agenda Item D-19, the Board adopted a minimum rent policy of \$480 per year, meaning no new disposition could have

an annual rent amount lower than \$480. This minimum rent figure was based on estimated staff time required to process the documentation for a lease (and certain other dispositions) and manage it thereafter.

In the meantime, the Applicant investigated the historic designation for the property and applied for historic status. The Hawaii Historic Places Review Board considered the application on December 13, 2008, and tentatively nominated the church to the Hawaii Register of Historic Places. However, the historic designation review has been temporarily suspended pending action on Applicant's present request, as well as the request of the owner of an abutting lot for an expanded easement over the church lot.

In 2009, the Applicant submitted its application requesting a direct lease of the subject parcels in lieu of a revocable permit. A disposition by lease raises new issues with respect to the church lot and TMK 3<sup>rd</sup>/ 6-9-02: 10 (Parcel 10). As shown on Exhibit B, the church lot comprises three distinct sections: (i) a 19,605 sf area makai of Puako Beach Drive where the church building is located; (ii) a 7,331 sf portion within the Puako Beach Drive right-of-way; and (iii) a 1,549 sf portion on the mauka side of the road. In effect, the parcel has been physically subdivided by the construction of the road through the parcel. However, there is no legal subdivision of record.

Puako Beach Drive is maintained as a County highway. Under the Highways Statute, HRS Sections 261-1 and 261-2, the County is deemed to be the owner in fee simple of the road right-of-way through the church lot. Accordingly, the State cannot lease the entire parcel to the Applicant. Moreover, the State cannot lease an unsubdivided portion of a parcel to a tenant. To resolve this issue, staff has included the requirement above that the Applicant obtain subdivision approval for the church lot.

Once subdivision is complete, it is anticipated that the 19,605 sf portion with the church on it will be a legally subdivided lot that the State can then lease to Applicant. Based on a 1997 boundary determination of the Land Use Commission, the 7,331 sf road right-of-way portion of the lot and the 1,549 sf portion mauka of the road are located within the conservation district. Depending on input from the Office of Conservation and Coastal Lands, the smaller 1,549 sf portion of the parcel may be consolidated into adjoining parcel TMK 3<sup>rd</sup>/ 6-9-01: 15, which is also in the conservation district. After subdivision approval, staff will prepare a separate submittal for the set-aside of the resulting road lot to the County of Hawaii.

A similar situation exists with respect to Parcel 10. This parcel contains a total area of 0.39 acre. However, approximately 0.11 acre is occupied by Puako Beach Drive and located within the conservation district. Accordingly, Applicant will need to obtain subdivision approval for this lot as well, and staff will later address the set-aside of the resulting road lot to the County.

As indicated in the table above, there are number of encumbrances affecting the subject parcels. There is an access easement over the church lot in favor of the landlocked parcel designated as TMK 3<sup>rd</sup>/ 6-9-02: 11 and owned by the Joseph F. Pickering and Helen D. Pickering, as trustees of the Pickering Trust (Trust). At its meeting of November 19, 2009, Items D-5 and D-6, the Board approved the Trust's request for the amendment and expansion of this easement. Another access and utility easement covers the southwestern corner of the church lot and runs in favor of the parcel designated as TMK 3<sup>rd</sup>/ 6-9-02: 12 (Parcel 12) and owned by the Association of Apartment Owners of the Whale's Tail (Whale's Tail).

As shown on Exhibit A, TMK 3<sup>rd</sup>/ 6-9-02: 7 (Parcel 7) is a shoreline parcel with an area of approximately 0.75 acre located to the right (east) and one parcel over from the church lot. It is vacant but encumbered by a perpetual access and utility easement in favor of the adjoining private land designated as TMK 3<sup>rd</sup>/ 6-9-02: 5. A lease of Parcel 7 to the church for landscaping purposes will not affect the easement holder's use of the easement. With the exception of the easement area, the lot is presently overgrown with kiawe trees.

TMK 3<sup>rd</sup>/ 6-9-02: 8 (Parcel 8) is a shoreline parcel with an area of approximately 0.84 acre adjacent to and just east of the church lot. It is vacant and unencumbered and largely overgrown with kiawe trees. Due to erosion or subsidence of the shoreline, the tax map attached as Exhibit A may not accurately reflect the current coastal boundaries of Parcels 7 and 8. The CSF map prepared in 1967 for RP S-4350 (copy attached as Exhibit B) shows the shoreline much closer to the church lot. All four subject parcels will need to be surveyed in conjunction with the preparation of the CSF map for the new lease, and to satisfy subdivision requirements.

Parcel 10 is encumbered by the access and utility easement in favor of Parcel 12 owned by the Whale's Tail. In 2008, an attorney for the Whale's Tail contacted staff and indicated that the Whale's Tail was interested in obtaining a landscaping easement over all of the area of Parcel 10 located outside of the road right-of-way. Staff advised the attorney of the Board's prior action approving a revocable permit over Parcel 10 to the Applicant subject to the determination of rent.

Staff believes the highest and best use of the church lot is for church purposes due to the current and historical existence of the Hokuhoa Church on the property. The subject parcels are all located within the Special Management Area with a zoning designation of Open. Permitted uses within the Open district include existing churches and temples of historic significance, growing of plants provided such growth does not impair the view intended to be preserved within the Open district, and other uses that protect the historic significance of the area.

Taking into account the applicable zoning, SMA status, the erosion or subsidence of coastal Parcels 7 and 8, and the 40-foot shoreline setback for any construction on those

parcels, staff believes that Applicant's proposed use of the subject lands presents the highest and best use of the lands. Additionally, Applicant's landscaping and maintenance of the parcels would relieve the State of tree-trimming and land maintenance burdens for the parcels during the term of the lease.

Applicant qualifies for a direct lease as an eleemosynary institution under HRS Section 171-43.1. Applicant has provided staff with a copy of a December 17, 1968 determination letter from the Internal Revenue Service stating that Applicant is entitled to Internal Revenue Code Section 501(c)(3) status.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated June 30, 2009, staff solicited comments on Applicant's proposed project from the agencies and organizations listed below with the results indicated:

Agency/Organization	Comments
DLNR – State Historic Preservation Division (SHPD)	See Exhibits C and D attached, and discussion below.
DLNR – Conservation and Coastal Lands	No comments.
DLNR – Na Ala Hele	No response.
Office of Hawaiian Affairs	No response.
County Planning Department	No objections.
County Public Works	The minimum right-of-way for a County road is 50 feet. If Parcel B as shown on Exhibit B is to be conveyed to the County, it shall be widened to at least 50 feet.
County Department of Water Supply	No response.
County Fire Department	No response.
County Environmental Management	No comments.
Puako Community Association	No objections.

Regarding SHPD's comments, in its memorandum dated August 3, 2009 (Exhibit C) SHPD expressed concern about possible burials on Parcels 8 and 9 and the lack of an archaeological inventory survey for the property. SHPD requested the opportunity to have its staff visit the site and requested the Applicant to conduct a comprehensive literature review.

Applicant had already prepared the literature review as a result of its prior requests for

use of the lands. On August 28, 2009, SHPD staff met with Applicant's representative at the church site to review the results of the literature review and inspect the property. By its memorandum of November 30, 2009, SHPD advised staff that it had conducted the site visit and literature review, and confirmed that no burials are known or expected to be present in the location. SHPD now supports Applicant's proposed use of the lands. See Exhibit D.

With respect to the County Department of Public Works' comments, Applicant is prepared to address the County road right-of-way width requirement in Applicant's project.

RECOMMENDATION: That the Board:

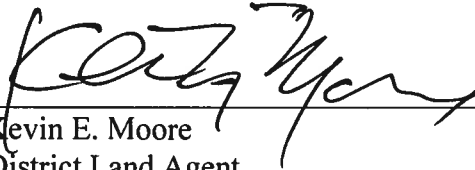
1. Rescind its prior Board action November 15, 2002, Item D-3, regarding the cancellation of Revocable Permit No. S-4350 and issuance of a new revocable permit to Hawaii Conference Foundation for the subject area.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the cancellation of Revocable Permit No. S-4350 and issuance of a direct lease to Hawaii Conference Foundation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a right-of-entry permit to the Hawaii Conference Foundation, its contractors, consultants, and persons acting for or on its behalf covering TMKs 3<sup>rd</sup>/ 6-9-02: 7, 8 & 10. The purpose of the right-of-entry is to allow Applicant to conduct field studies for its environmental assessment on the proposed use of these parcels. This permit, covering the three referenced parcels under the terms and conditions cited above, which are by this reference incorporated herein, is further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  - B. This right-of-entry shall be effective upon Board approval and shall expire



upon the issuance of the lease covering the subject parcels;

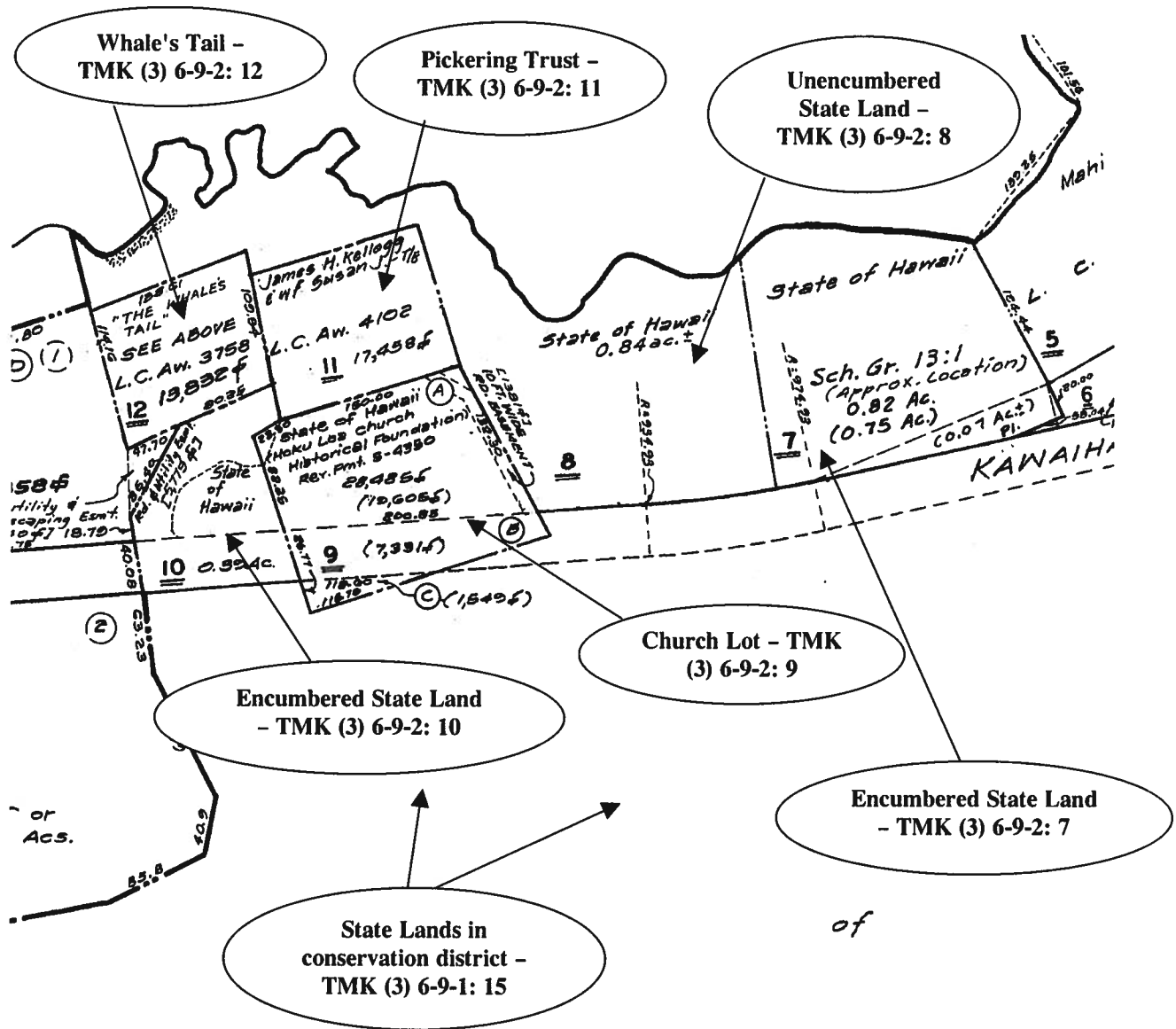
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

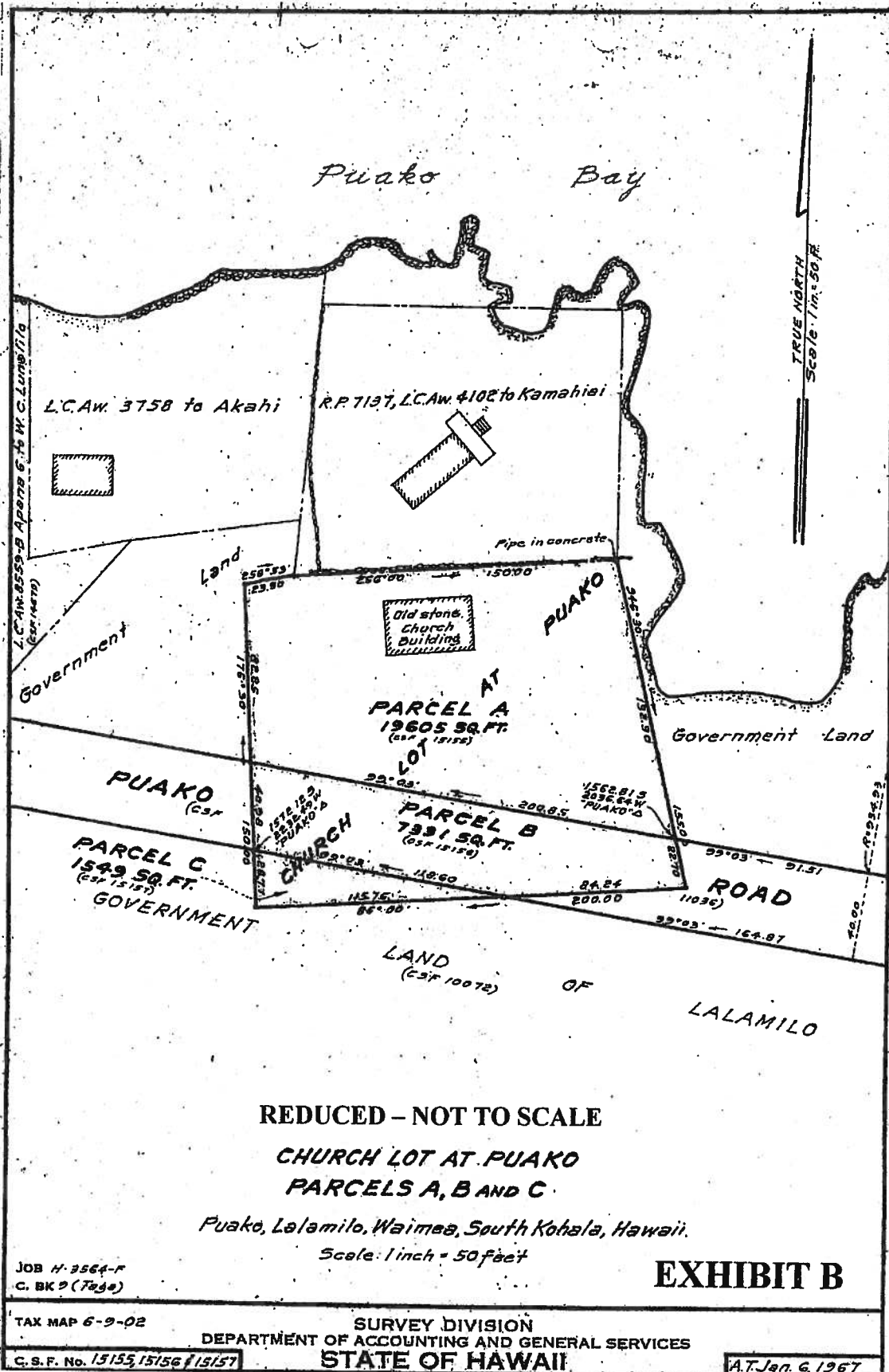
  
\_\_\_\_\_  
Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:

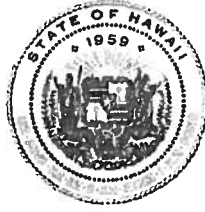
  
\_\_\_\_\_  
Laura H. Thielen, Chairperson



**EXHIBIT A**



LINDA LINGLE  
GOVERNOR OF HAWAII



09HD-055  
LAURA H. THIELLEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

2009 AUG -6 A 11:49  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

August 3, 2009

LOG NO: 2009.2493  
DOC NO: 0908MD05  
Archaeology

TO: Kevin E. Moore, District Land Agent  
DLNR Land Division

FROM: Nancy McMahon, Deputy SHPO/State Archaeologist and Historic Preservation Manager

State Historic Preservation Division

A handwritten signature in cursive script, reading "Nancy A. McMahon".

SUBJECT: **Chapter 6E-8 Historic Preservation Review –  
Request for Comment on a Cancellation of Revocable Permit No. S-4350 and  
Issuance of Direct Lease to the Hawaii Conference Foundation for Church and  
Landscaping Purposes; Right-of Entry to Hawaii Conference Foundation for  
Survey Purposes  
Lalamilo Ahupua`a, South Kohala District, Island of Hawaii  
TMK: (3) 6-9-002:007, 008, 009 & 010**

Thank you for the opportunity to comment on the aforementioned project, which we received on July 1, 2009. The applicant would like to arrange a survey for subdivision purposes, to conduct landscaping, and other activities.

According to our records his project was begun initially in 2005, at which time our department recommended investigating the option of "Historic" status for the Koku Loa Church in response to the applicant's request for lower rent consideration. At that time we noted in our files that one or more burials are believed to exist in parcels 8 and/or 9; to date no archaeological inventory survey has been conducted on this property.

Due to land changes in the recent past, the fact that this proposed use would include subdividing coastal land which includes historic trails and the lack of any formal documentation on any of the above, we request the opportunity to have SHPD staff visit the site location and further request the applicant conduct a comprehensive literature review (including interviews with appropriate native Hawaiian individuals and groups) prior to our considering a determination on this application.

If you have questions about this letter please contact Morgan Davis at (808) 933-7650.

EXHIBIT C

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

LAURA H. THELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
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CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

November 30, 2009

LOG NO: 2009.4156  
DOC NO: 0911MD25  
Archaeology

TO: Kevin E. Moore, District Land Agent  
DLNR Land Division  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720

FROM: Nancy McMahon, Deputy SHPO/State Archaeologist and Historic Preservation Manager

State Historic Preservation Division

A handwritten signature in cursive script, reading "Nancy A. McMahon", is written over the typed name and title.

**SUBJECT: Chapter 6E-8 Historic Preservation Review --  
Revised Comment on a Cancellation of Revocable Permit No. S-4350 and Issuance  
of Direct Lease to the Hawaii Conference Foundation for Church and Landscaping  
Purposes; Right-of Entry to Hawaii Conference Foundation for Survey Purposes  
Lalamilo Ahupua'a, South Kohala District, Island of Hawaii  
TMK: (3) 6-9-002:007, 008, 009 & 010**

Thank you for the opportunity to comment on the aforementioned project. The applicant would like to arrange a survey for subdivision purposes, to conduct landscaping, and other activities. We originally responded in August (Log No. 2009.2493, Doc No. 0908MD05) requesting the opportunity to conduct a site visit and investigate via literature review the possibility of burials at this location, which has since occurred.

We can now confirm that no burials are known or expected to be present at this location. We support the items listed in the subject line and hope that the nomination of the church to the National Register of Historic Places can soon be completed.

If you have questions about this letter please contact Morgan Davis at (808) 933-7650.

**EXHIBIT D**